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August 15, 2022

Via ECF

The Honorable LaShann DeArcy Hall
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Krawitz et al. v. Five Below, Inc.*, Case No. 2:22-cv-02253-LDH-ARL

Dear Judge DeArcy Hall:

I represent Plaintiffs in the above action. I write pursuant to Rule I.A of Your Honor's Individual Practices to bring to the Court's attention a recent ruling on the motion to dismiss in *Gillett v. Zara USA, Inc. et al.*, 2022 WL 3285275 (S.D.N.Y. Aug. 10, 2022), a similar New York Labor Law ("NYLL") § 191 putative class action. The *Zara* order, attached hereto as Exhibit A, is relevant because it considered and rejected two of the arguments Defendant makes here in support of dismissal.

First, the decision held that the plaintiff had Article III standing solely based on the fact that he was paid on a biweekly basis in violation of NYLL § 191. *See Zara*, 2022 WL 3285275, at *6 ("Irrespective of the fact that Plaintiff ultimately received the entire sum of wages he was owed, this delay of payment, in and of itself, constitutes a concrete harm that suffices for purposes of Article III."). The decision further clarified that the "court does not read *TransUnion* or any other binding precedent to require a plaintiff to specify how he intended to take advantage of the time value of his wages if they had not been improperly withheld for a period of time." *Id.* at *7.

Second, the decision held that a private right of action exists under NYLL § 191. *See Zara*, 2022 WL 3285275, at *11 ("Defendants have presented no persuasive reason why this Court should depart from the myriad decisions in this Circuit that have followed *Vega* in finding a private right of action to enforce Section 191.").

Respectfully,



Yitzchak Kopel

cc: All counsel of record via ECF